IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISIDICTION

WRIT PETITION NO.479 OF 2005

Shri.Hiralal Amolik Vora ..Petitioner

Vs.

Shri.Sampat Ratanlal Gaikwad and Ors. ..Respondents

....

Mr.S.R.Nargolkar for Petitioner

....

CORAM : B.H.MARLAPALLE,J.

DATE : FEBRUARY 8,2005

P.C.:

1. Heard Mr.Nargolkar, the learned counsel for the petitioner. In Motor Accident Claim No.815 of 2001, the present petitioner came to be impleaded as opponent no.1 and opponent no.2 was the Insurance Company. The present petitioner filed an application on or about 4.5.2002 and prayed for dismissal of the claim on the preliminary point that it was not a claim arising out of motor vehicle accident in which one person lost life and some three others injured. The said application has been rejected by the learned Member of the M.A.C.T. Baramati on 7.12.2004. Hence, this petition.

2. The trial Court considered the contents of the F.I.R. filed on the date of the accident i.e.

17.3.2001 and noted that the explosion was of gelatine sticks which were kept in a tin box in the blasting machine and connected to the tractor. The deceased along with the driver Shri.Shivaji Gurave was an employee on the tractor. It considered the definition of motor vehicle under Section 2(18) of the Motor Vehicles Act, 1988 and held that from the circumstances noted in the F.I.R., it could be said that the explosion of gelatine sticks resulted in the death on the spot and the box containing the gelatine sticks was on the blasting machine connected to the tractor. The reasoning given by the Tribunal cannot be held to be perverse or manifestly erroneous so as to call for interference, more so because, even an application filed under Section 140 for no fault liability, could not be decided for about 4 years. Though the subject accident has not taken place while the tractor was being driven, the fact remains that it was being used for drilling a bore-well and the blasting machine was attached to it.

3. Petition is rejected summarily.

[B.H.MARLAPALLE,J.]